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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
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Telecommunications Services)
Inside Wiring)
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Customer Premises Equipment)
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In the Matter of)
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)
Implementation of the Cable)
Television Consumer Protection)
and Competition Act of 1992:)
)
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Cable Home Wiring)
)
)

CS Docket No. 95-184

MM Docket No. 92-260

**COMMENTS OF
MEDIA ACCESS PROJECT AND CONSUMER FEDERATION OF AMERICA**

Of Counsel:
Bradley Stillman
CONSUMER FEDERATION OF AMERICA
1424 16th Street, NW
Washington, DC 20036

Law Student Intern:
Maria Victoria Suarez
Washington College of Law
at American University

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Joseph S. Paykel
Andrew Jay Schwartzman
Gigi B. Sohn
MEDIA ACCESS PROJECT
2000 M Street, NW
Suite 400
Washington, DC 20036
202-232-4300

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SUMMARY

The Commission has erroneously placed primary emphasis on issues concerning access requirements and so-called "property rights" of incumbent narrowband and broadband service providers, competitive service providers, and property owners.

But this proceeding is *not* simply an allocation of property rights among competing entrepreneurs.

Rather, it is most properly directed to the needs of the public - video services subscribers - and *their* First Amendment rights to receive access to information from diverse sources.

In this proceeding, the Commission will determine whether and how subscribers will be able to change freely among competing broadband and narrowband services. It is no exaggeration to state that these decisions may lay the foundation for consumer choice for decades to come.

To make this choice meaningful, citizens must be able to select broadband providers at little cost and little inconvenience. A demarcation point which requires access to wires buried in concrete walls or steel moldings will frustrate subscriber choice and give incumbent providers an unfair competitive advantage. Conversely, setting a demarcation point at easily accessible switching boxes will ensure that choice and competition flourish.

Media Access Project and Consumer Federation of America support use of a common demarcation point which, for single dwelling units, should be outside the home, and for multiple dwelling units should generally be where the individual wiring is first distinguishable from the common wiring.

As a general controlling principle, the subscriber should control the wiring and customer premises equipment on his or her side of the demarcation point. This means that there should

be access to wiring that permits the subscriber to provide, install, maintain, and reconfigure his or her own wiring. Similarly, the right to purchase and connect customer-owned premises equipment should be afforded to subscribers.

Control of premises wiring and CPE will benefit subscribers because they will be able to tailor the wiring configuration and CPE capability and features that provide the greatest personal utility. Meanwhile, the market for wiring and CPE will develop, causing prices to drop, improving the quality and range of features, and creating new jobs. Moreover, there is little evidence that this will cause harm to the network or signal leakage. Most signal leakage occurs at the proposed demarcation point, and therefore the burden to control it could easily be placed on the subsequent, competitive provider.

**Before the
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Television Consumer Protection)	MM Docket No. 92-260
and Competition Act of 1992:)	
)	
Cable Home Wiring)	
)	

**COMMENTS OF
MEDIA ACCESS PROJECT AND CONSUMER FEDERATION OF AMERICA**

Media Access Project ("MAP") and Consumer Federation of America ("CFA") hereby submit these comments in response to the Commission's *Notice of Proposed Rulemaking*, FCC No. 95-504 (released January 26, 1996) ("*NOPR*"), and in response to the Commission's *First Order on Reconsideration and Further Notice of Proposed Rulemaking*, FCC No. 95-503 (released January 26, 1996) ("*First Order*").

MAP and CFA address the following issues in these comments:

First, the Commission should mandate the use of wiring schemes which allow subscribers the utmost ease in switching service providers. MAP and CFA believe this initially requires establishing a uniform demarcation point for all providers. For single dwelling units ("SDUs"), this should be set outside the home, and for multiple dwelling units ("MDUs"), this should be the point at which the subscriber's wiring is first distinguishable from the common wiring. To

prevent arrangements which make it impossible for subscribers to switch individually, the Commission should forbid new installations of loop-through wiring in MDUs. Second, subscribers should have pre-termination access to wires. Finally, they should be able to own customer premises equipment ("CPE") and enjoy the benefits of a competitive market for equipment and wiring. However, since the markets for broadband wiring and cable CPE¹ are not currently competitive, the Commission should not deregulate cable CPE lease rates and wiring charges at this time; indeed, for cable CPE used to provide basic tier service, it may not do so as a matter of law.

I. INTRODUCTION

The *NOPR* and the *First Order* each emphasize the rights of competing industries. The Commission expresses concern with issues such as the ability to connect to demarcation points which are located inside concrete or molding, the status of asserted property rights in wiring, and the need to lessen confusion resulting from disparities among regulated parties.

MAP and CFA respectfully remind the Commission that in this proceeding, in its exercise of functions relating to the mass media, it must place the needs and interests of *viewers* before the interests claimed by the assorted industry competitors. This is intrinsic to the Commission's statutory mandate to serve the public interest. *See, e.g.*, 47 USC §§303, 521(4). *Cf. U.S. v. Southwestern Cable Co.*, 392 U.S. 157 (1968).

¹Throughout these comments, MAP and CFA will use the term "cable CPE" to refer to equipment which is used by subscribers to receive the basic service tier, such as converter boxes, addressable converter boxes and remote controls, see 47 USC §543(b)(3), as well as other equipment which is used to receive multichannel video programming. The market for non-programming cable CPE, such as cable modems, is still developing, and MAP and CFA express no opinion as to whether consumers should be allowed to provide and connect such equipment.

The First Amendment affords viewers the right to choose among a diverse range of speakers. Multichannel video programming service subscribers,² specifically, have a right to choose among a variety of editorial packages provided by different services. To that end, Congress has recently found and reiterated that "[t]here is a substantial governmental and First Amendment interest in promoting a diversity of views provided through multiple technology media." Cable Television Consumer Protection and Competition Act of 1992, P.L. 102-385, §§2(a)(6), 2(b)(1) ("1992 Cable Act"). Echoing prior sentiments, Congress defined these goals to include assurance that cable provides "the widest possible diversity of information sources and services..." and "to promote competition in cable communications...." 47 USC §§521(4), (6).

This same principle, *i.e.* "preserv[ing] an uninhibited marketplace of ideas in which truth will ultimately prevail, rather than to countenance monopolization of that market," has been endorsed by the Supreme Court time and time again. In the cable context,³ the Court has only recently found that:

[A]ssuring that the public has access to a multiplicity of information sources is *a governmental purpose of the highest order*, for it promotes values central to the First Amendment. Indeed, it has long been a basic tenet of national communications policy that 'the widest possible dissemination of information from diverse and antagonistic sources is *essential to the welfare of the public*.'

Turner Broadcasting System v. FCC, 114 S.Ct. 2445, 2470 (1994), *quoting Associated Press v. United States*, 326 U.S. 1, 20 (1945) (citation omitted, emphases added). Moreover, the Court

²For ease of expression, these comments will use the terms "multichannel video programming service subscribers" and "cable subscribers" interchangeably. Despite this, there is no intention to differentiate between cable and non-cable (for example, DBS, MMDS, or SMATV) services.

³This is the same principle which, in the broadcasting context, impelled the Court to declare that, "[i]t is the right of the viewers and listeners...which is paramount." *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367, 390 (1969).

has declared that there is always a substantial government interest in eliminating anticompetitive behavior, even when the anticompetitive individual or entity is engaged in expressive activity.

Id.

The subscribers' interest in choosing between speakers will be utterly meaningless if they face impediments to exercising that choice.

Moreover, it is a necessary condition for the Commission's pro-competition goals that subscribers can choose freely among cable services and other multichannel video providers. The Commission can best promote this "uninhibited marketplace of ideas," *Red Lion Broadcasting*, 395 U.S. at 390, by adopting policies which make the viewers' choices affordable and convenient.

II. DEMARCATION POINT

The Commission seeks comment on whether it should establish a common demarcation point⁴ for all wireline communications services, regardless whether they are cable or telephony, broadband or narrowband. *NOPR* at ¶12. Noting that adopting a single, common demarcation point might avoid needless confusion and expense and might facilitate competition among service providers, *id.*, it asks about the impact of setting various possible demarcation points in each of three cases: SDUs, MDUs with loop-through wiring, and MDUs with non-loop-through wiring. *Id.* at ¶¶15-19.⁵ On the other hand, it notes that there may be technical and practical constraints

⁴The demarcation point is a defined location on each subscriber's wire which determines "(1) the location at which the subscriber may control the internal home wiring if he or she owns it, (2) the point at which an alternative multichannel video programming service provider would attach its wiring to the subscriber's wiring in order to provide service; and (3) the point from which the customer has the right to purchase cable home wiring upon termination of service." *NOPR* at ¶16.

⁵A loop-through cable wiring system is one in which "a single cable provides service to either a portion of or an entire MDU," so that every subscriber on the loop must receive service from

to doing this. *Id.* at ¶13.

A. The Commission Should Harmonize Its Wiring Rules To Adopt A Common Demarcation Point For Cable, Telephony, Data, and Other Multichannel Video Programming Service Providers.

Whatever the practical constraints, the only way to ensure that viewers can freely choose between and among service providers is to set a common demarcation point at a location equally accessible to all service providers. The mere existence of competitive providers will not bring about the benefits of competition; subscribers must have the ability to switch providers with ease and at an affordable cost. Setting the demarcation point at a common location will serve this goal by avoiding confusion among service providers, eliminating the need for installation of redundant wiring, and reducing subscribers' perception of the complexity of the process.

In any event, as the Commission has rightly observed, the distinctions between telephony and video programming services are dissolving as technology advances and the marketplace changes. *NOPR* at ¶12; *See* Joint Petition for Rulemaking of MAP, United States Telephone Association, and Citizens For A Sound Economy Foundation, (filed July 27, 1993) ("Joint Petition"). A single company may soon provide both services on a single wire. Thus, there is no logical reason to preserve the dichotomy for inside wiring. As the Commission posits, it would just cause "needless confusion and expense for consumers, property owners, and service providers." *NOPR* at ¶12.

the same provider. *First Order* at ¶33. If the cable is broken or removed, signals to all succeeding units would be interrupted. *Id.* In a non-loop-through system, "each subscriber has a dedicated line (a 'drop') running to his or her premises from a common 'feeder line' or 'riser cable.'" *NOPR* at ¶7. *See also*, discussion below, page 10, n. 12.

B. To Promote Ease Of Viewer Switching, The Commission Should Fix A Demarcation Point Which Requires The Minimum Degree Of Provider Intrusion Into Private Dwellings Or Common Areas.

Once the Commission determines to adopt a common demarcation point, it should fix that point at a location that allows providers to access inside wiring with the minimum intrusion into subscriber premises or common areas of multiple dwelling units. This will ensure that subscribers will not resist switching providers because of high wiring costs, inconvenience, lost time, and risk of property damage.

By contrast, if the Commission were to set a demarcation point inside the dwelling, the owner or subscriber would have to allow provider representatives to enter the unit to change service or to conduct maintenance and repairs. This could require the installation of redundant wiring.⁶ Service calls would also inconvenience the owner or subscriber, may require greater labor costs, and could lead to instances of damage to the property or personal items on the property.

The effect of these inconveniences and costs will be to deter subscribers from switching providers, thereby lessening competition. What is most significant here is the perception of costs and obstacles. MAP and CFA believe that a subscriber's enthusiasm for competing services will quickly dissipate as his or her perceived expense and difficulty in making the transition mounts.

Moreover, setting a demarcation point outside the subscriber's premises will help ensure that competitors play on a level field. Otherwise, the barrier posed by installing redundant home

⁶Bell Atlantic has claimed that in 1993, the typical cost of installing cable inside wire was \$50 or more. See Comments of Bell Atlantic at 3, in *Cable Home Wiring*, MM Docket No. 92-260. In the Washington, D.C. metropolitan area, for example, the cost was an even greater \$93. *Id.* at 3 n. 5.

wiring may place start-up providers at a serious competitive disadvantage.⁷ While most incumbent cable operators have had to bear the costs of wiring their subscribers both inside and outside the demarcation point, the critical difference is that they did not face competition at the time. Because the incumbent operators could charge monopoly rents, they were able to pass along these wiring costs to subscribers either directly or through higher monthly rates. Competitive providers will face price competition are less able to pass through this cost. If they lose would-be-subscribers as a result of high installation costs and perceived inconvenience, their handicap will be even greater.⁸

1. The Commission Should Extend Its Policy Of Expanding Citizen Control Over Premises Wiring.

The Commission's prior decisions have evidenced a longstanding pattern of expanding citizen control over premises wiring. Since the U.S. Court of Appeals for the D.C. Circuit found that telephone subscribers have a right reasonably to use their telephones in ways that are privately beneficial and not publicly detrimental, *Hush-A-Phone Corp. v. U.S.*, 238 F.2d 266 (D.C.

⁷For example, based on an average cost of \$50 per subscriber, the cost to install redundant home wiring for a broadband service in a market with 50,000 installations could be as high as \$2.5 million. See Joint Petition at 5 n. 12.

⁸There is a possibility that a subscriber would want broadband services from two providers. For example, the subscriber may switch his or her multichannel video programming subscription from company A to company B, but still wish to receive telephone service from company B. Or a subscriber may wish to receive video programming services from both companies. It is MAP's understanding that the current state of technology will not allow these two networks to attach in this manner so as to share a single broadband wire leading into the home. As a result, the subscriber may be forced to allow both wires into the home despite the redundancy.

Yet, without the revision to the demarcation point rules MAP proposes in these Comments, the subscriber would not have a reasonable choice to switch to company B in the first place. Instead, the demarcation point would be buried in concrete or conduit, and inaccessible to the competitive provider regardless whether it would replace the incumbent provider for all services or for just a few.

Cir. 1956), the Commission has constantly enlarged the ability of citizens to connect wiring and devices to the network. *See, e.g., Carterfone*, 13 FCC2d 420, 424, *recon den.* 14 FCC2d 571 (1968); *Amendment of Section 64.702 of the Commission's Rules and Regulations*, 77 FCC2d 384 (1980) ("*Computer II*"); First Report and Order, *Connection of Simple Inside Wiring to the Telephone Network*, 5 FCCRcd 4686 (1990) ("*1990 Telephone Inside Wiring Order*"); *NOPR* at ¶65 n. 97.

In 1990, in the course of examining the demarcation point for pre-termination access to telephone wiring, the Commission found that consumer access posed little risk of harm to the telephone network. Any risk of harm, it continued, was "fully justified and outweighed by the consumer benefits of allowing customers and their agents to access carrier-installed wiring." *1990 Telephone Inside Wiring Order*, 5 FCCRcd at 4691.⁹ This finding logically compelled a revision of the demarcation point definition. The Commission condemned the widespread carrier practice at the time of setting the demarcation point far inside the point of entry into the customers' premises, since this practice was not "minimally burdensome" on the customers ability to access the wiring. *Id.* at 4692. Instead, it set the telephone demarcation point close to the protector, noting that "direct access to...wiring will not be harmful anywhere on the customer's premises." *Id.*

The policy justifications for expanding the demarcation point location for telephone wiring apply with equal force to broadband wiring. The Commission considered - and refrained from -

⁹In addition, as a policy matter, the Commission has found that liberalizing customer access to telephone inside wiring would serve "to increase competition, to promote new entry into the market, [and] to produce cost savings which would benefit the ratepayers." Second Report and Order, *Detariffing the Installation and Maintenance of Inside Wiring*, CC Docket No. 79-105, at 2 (released February 24, 1986).

extending its rules in its *1993 Cable Home Wiring Order*, stating that it "generally believe[s] that broader cable home wiring rules could foster competition." Report and Order, *Cable Home Wiring*, 8 FCCRcd 1435, 1436 (1993). However, its only stated reason for not acting was because it was under the strict time constraints for promulgating rules under the 1992 Cable Act. *Id.*

Moreover, the Commission has not expressed reasons why telephone inside wiring-type rules could not apply to pre-termination cable wiring. The *First Order* states that the 1992 Cable Act does not require the Commission to expand its home wiring rules to include pre-termination access.¹⁰ *First Order* at ¶8. But it rightly concludes that, in light of the increasingly competitive nature of the multichannel video services industry as a whole, it should consider the context of "broad telecommunications issues" which extend beyond the 1992 Cable Act. Specifically, it questions whether access to inside wiring might, *inter alia*, promote greater citizen choice and competition. *Id.*

In any event, in no way did the home wiring provision of the 1992 Cable Act demonstrate that Congress intended to *preclude* pre-termination access; it was merely silent on the issue.¹¹ Thus, the Commission enjoys broad discretion to create home wiring rules which would advance

¹⁰The home wiring provisions of the 1992 Cable Act have been codified at 47 USC §544(i). This section provides, in relevant part, "the Commission shall prescribe rules concerning the disposition, after a subscriber to a cable system terminates service, of any cable installed by the cable operator within the premises of such subscriber." 47 USC §544(i).

¹¹ Moreover, although the Senate Commerce Committee did not adopt language ordering the FCC to create pre-termination access rules, it did express support of them, stating that they were "a good policy and should be applied to cable." S. Rep. No. 92, 102d Cong., 1st Sess., at 23, *reprinted in* 1992 USCCAN 1133 ("S. Rep."). The House Energy and Commerce Committee simply did not address pre-termination access. H.R. Rep. No. 628, 102d Cong., 2d Sess., at 118-19 ("H. Rep. ").

the public's right to choose among speakers. *Chevron v NRDC*, 467 U.S. 837 (1984); 47 USC §§214(a), 521(4).

2. Single Dwelling Units

The Commission seeks comments on the effects of setting a common demarcation point for both single and multiple dwelling units. *NOPR* at ¶15. For SDUs, the commission must choose, *inter alia*, between a uniform demarcation point that mirrors the cable demarcation point, 12 inches outside of where the wire enters the premises, or a point that mirrors the telephone demarcation point, up to 12 inches inside the subscriber's premises. *Id.*

For SDUs, there are relatively few technical and practical considerations. MAP and CFA believe the cable model is superior because it does not require entry into customer premises. This is less costly to subscribers in terms of inconvenience, lost time, and risk of property damage. It also allows easier access for competitive service providers. See discussion above, page 6.

3. Multiple Dwelling Units With Non-Loop-Through Wiring

For multiple dwelling units in a non-loop configuration, the demarcation point should be where the individual customer wiring is first distinguishable from common wiring. For "homerun" wiring, this would be at the building's common multi-tap, whether located in a security box or utilities closet.¹² Since this is often located at or near the minimum point of

¹²It is the understanding of MAP and CFA that cable operators currently employ either of two different configurations - so-called "homerun" wiring and "hard line" wiring. "Homerun" refers to a configuration where each dwelling unit has a dedicated drop line running from the unit to a common feeder line. The drop lines from all the units tap into the feeder line at a common security box, or gembox, often located in the basement or outside the building. See *NOPR* at ¶17. In a "hard line" wiring configuration, there is still a dedicated drop line to each dwelling unit. The drop lines for all the units in the building do not go to a common gembox,

entry, this will harmonize the demarcation point for cable and broadband wiring with the existing demarcation point for telephone wiring. For "hard line" wiring, this definition would place the demarcation point at the security box on each floor.

Setting the demarcation point at the location where the individual wire is first distinguishable from common wiring will allow competitive service providers to attach to an individual subscriber's line at an easily accessible location either at the minimum point of entry or a floor's security closet. This could be accomplished at the incumbent's gembox, or with a second, proprietary gembox. There will be no inconvenience or cost from disruption to the MDU's common area or structures. Nor will each subscriber face the costs of allowing access to his or her dwelling. See discussion above, page 5.

Moreover, as the Commission has observed, establishing a demarcation point only 12 inches outside the individual dwelling unit often does not allow meaningful competition. The demarcation point is often "physically inaccessible (*e.g.*, buried inside a concrete wall or metal conduit), or is practically inaccessible (*e.g.* where the building owner will not permit another wire to be strung through the hallways)." *NOPR* at ¶19. Competitive service providers - and subscribers, to the extent the cost is passed through to them - will face enormous burdens in attaching their cable to the demarcation point. MDU owners may elect to avoid damage and disruption to the building by denying access to competing service providers or by forbidding tenant-subscribers from switching.

The Commission has noted that in its *Cable Home Wiring* proceeding, cable operators

however. Instead, all the drop lines on a floor connect to the common feeder line, the "riser," at a security box located on each floor. MAP and CFA understand that these drop lines very frequently run through molding or metal conduits, or are encased in concrete.

argued that moving the demarcation point outside the subscriber's premises is "contrary to the plain language of the [Cable Act], which states that the home wiring rules are to apply to 'cable installed by the cable operator within the premises of the subscriber.'" *NOPR* at ¶10. *See* 47 USC §544(i) (reproduced in part above, at page 9, n. 10).

But the cable industry's argument turns Congressional intent on its ear. The Act is silent; the plain language *does not forbid* the FCC from extending the home wiring rules to external individual wiring. 47 USC §544(i). Neither does it show an intent to prevent any other subscriber ownership of wiring. It merely compels the Commission to prescribe wiring rules in one specific case: *post-termination and inside the dwelling unit*. Indeed, the explicit language of the Communications Act gives the Commission broad powers and an affirmative obligation to create rules which serve the public interest. 47 USC §§214(a), 521(4).

The legislative history of this section is ambiguous at best. The House Report merely refers to the home wiring section, *i.e.* the narrowly-crafted order telling the commission to create rules enforcing the post-termination right of access. It says that *this narrow provision* "is not intended to cover common wiring...." H. Rep. at 119. Although the Senate Report features a similar limitation, it too refers only to this section's narrow order. S. Rep. at 23. Indeed, the Commission has already observed that Congress expressed a preference for competition over regulation in setting rates. *NOPR* at ¶¶46, 76. It should not now arbitrarily ignore this preference by adopting policies which allow incumbent providers to use common area wiring as an anti-competitive weapon. Therefore, in the face of silence in the statutory language, and ambiguity in the legislative history, the Commission may exercise broad discretion. *Chevron*, 467 U.S. at 843.

4. Multiple Dwelling Units With Loop-Through Wiring

For multiple dwelling units with loop-through wiring, a single cable is used to provide service to all subscribers on the loop, and every subscriber is limited to receiving service from the same provider. *First Order* at ¶33. The Commission has excluded loop-through wiring from its cable home wiring rules, so that operators are not required to offer to sell wiring to subscribers upon termination of service. *Id.* at ¶36. The Commission asks for comment on how to apportion control of a loop-through wiring system to assure that subscribers have a choice of multichannel video programming service providers. *Id.* at ¶40.

At a minimum, the Commission should forbid any new loop-through format installations in MDUs. By their nature, loop-through systems prevent subscribers from exercising their First Amendment rights and consumer rights to free, *individual* choice among service providers. Moreover, there is even a danger that, to prevent subscribers on the loop from later switching individually to a competitor, incumbent providers will use loop-through configurations *more frequently* in newer installations. Thus, the primary motivation for loop-through architecture in the technological era of 1996 and beyond is to impede competition.

One limited solution proposed by some parties - in which switching providers would be possible only if every subscriber on the loop consented - is no solution at all. Common sense dictates that unanimous consent among an entire loop, with perhaps eight or twelve units, is more difficult to achieve than a unilateral decision. In many cases, individuals will be unable to choose among service providers and will not benefit from competition.

III. CUSTOMER ACCESS TO INSIDE WIRING AND OWNERSHIP OF CUSTOMER PREMISES EQUIPMENT

The Commission's current cable inside wiring rules do not require cable operators to

permit subscribers to provide and install their own cable inside wiring. *See generally*, 47 CFR §§76.801-.802; *NOPR* at ¶39. Nor do these rules require them to permit subscribers to move or rearrange operator-owned cable inside wiring prior to service termination. *NOPR* at ¶39. Some, but not all, cable operators voluntarily permit them to do so. *Id.*

Meanwhile, the installation and maintenance of telephone inside wiring - complex and simple, residential and non-residential - has been deregulated in a series of Commission proceedings. *Id.* *See also*, *CPE Report and Order*, 48 FedReg 50,534 (1983); Second Report and Order, *Telephone Inside Wiring*, 51 FedReg 8498 (1986) ("*Telephone Wiring Second Order*"); Reconsideration Second Report and Order, *Telephone Inside Wiring*, 1 FCCRcd 1190 (1986) ("*Telephone Wiring Reconsideration*"). The Commission has also deregulated the ownership of customer premises equipment. *Computer II*, 77 FCC2d 384 (1980).

A. Access To Broadband Inside Wiring

The Commission seeks comments on whether it should extend its current rules to permit subscribers access to their broadband inside wiring prior to service termination, and to provide and install their own broadband inside wiring. *NOPR* at ¶42. It asks whether this action would promote consumer choice, competition among service providers, and firm entry into new telecommunications markets. *NOPR* at ¶44. It also questions whether it has authority under the Communications Act to require pretermination access and to deregulate the rates an operator can charge subscribers for home wiring. *NOPR* at ¶46. It tentatively concludes, moreover, that there is no reason to change the existing rules permitting customer access to telephone wiring. *Id.*

1. Permitting Subscribers To Access Broadband Inside Wiring Will Produce Several Market Benefits.

As MAP and CFA have already observed, subscribers' First Amendment right to choose

among speakers has little value if it involves great cost or difficulty. To promote this ability, it is essential to expand subscriber access to cable inside wiring prior to service termination.

Access will cause subscribers to take a proprietary interest in their home wiring. In a manner analogous to telephone service, cable wiring access will allow subscribers to tailor the configuration of wiring inside their homes in a manner which gives them the most personal utility, yet which will not harm the network.¹³ As this proprietary interest builds, it is likely that a subscriber's technological sophistication will increase and expectations will become sharper and better defined. He or she will become better able to know what to expect from broadband service, and more willing to scrutinize comparatively between competing providers. Moreover, and perhaps most importantly, competition will be enhanced because the subscriber will be less likely to perceive a large financial cost or practical difficulty to switching providers. See discussion above, page 6.

Additionally, current cable inside wiring rules impede competition for the wiring itself, competition for multichannel video programming service, and the development of new telecommunications services and technologies. Allowing subscribers to provide, install, and maintain inside wiring will encourage new entrants to provide wiring, connectors, fasteners, and even installation services. Competition for these items will benefit subscribers with lower prices and higher quality. Subscribers will control of the costs of their internal wiring, and will not have to pay to purchase if they wish to change to an alternative service provider.

Finally, by permitting access, the Commission would harmonize its rules for broadband

¹³It is MAP and CFA's understanding that in most cases, if subscribers install wiring of ordinary quality in relatively simple configurations, there is nominal risk harm to the network or risk of signal leakage.

and narrowband wiring, thus putting to rest distinctions which serve little purpose except to confuse. Especially since it observes the decreasing technological contrast between them, *NOPR* at ¶12, the Commission should regulate cable inside wiring with the same model it uses for telephone inside wiring.

2. Permitting Customer Access To Narrowband Wiring Has Proven A Great Success.

The Commission's rules allowing customers to install and maintain their own telephone inside wiring have been a great success - they have increased competition and produced cost saving benefits. *See Telephone Wiring Reconsideration*, 1 FCCRcd at 1192 (detariffing telephone wiring was "essential step in the process" of promoting universal service at reasonable rates). The Commission has also found that there is insubstantial risk that consumers or their agents would connect one- and two-line wiring to the system improperly, *i.e.*, in a manner which would cause harm to the network. Report and Order, *Amendment of Part 68*, 97 FCC2d 527 (1984). More recently, the Commission eliminated yet another prohibition on ratepayer access. In repealing its rule which required ratepayers to access the network only at carrier-installed jacks, the Commission held that the rule "restrict[ed] customer options, and impose[d] costs on availability of useful devices and service." *1990 Telephone Inside Wiring Order*, 5 FCCRcd at 4691.

One significant distinction the Commission has made between telephone and cable inside wiring is the risk of cable signal leakage. *NOPR* at ¶44; *Cable Home Wiring*, 8 FCCRcd at 1436. Although MAP and CFA agree that these concerns are important, MAP and CFA believe they have been exaggerated. It their understanding that the greatest risk of signal leakage occurs at the point where the drop line meets the feed, and that this risk dwarfs the risk of leakage from

the inside wiring. The Commission can eliminate the greater risk by requiring that the competitive provider which replaces the incumbent provider must meet the same level of responsibility for leakage. To further lessen the risk, the Commission could set standards which apply to service providers and equipment suppliers to ensure that all inside wiring and connectors are properly shielded.

3. **Immediate Deregulation Of Wiring Rates Before A Competitive Market Has Developed Violates The Plain Language Of The 1992 Cable Act And Would Destroy Any Benefits Of Citizen Access To Broadband Wiring.**

In addition, the Commission asks whether deregulating cable inside wiring rates might be the best way to ensure that subscribers are permitted to own and to access their cable inside wiring. *NOPR* at ¶46. It questions whether it has the statutory authority to deregulate cable home wiring rates. It especially calls attention to Section 16(d) of the 1992 Cable Act, 47 USC §543(b), and its observation that Congress expressed a general "[p]reference for competition' over regulation in setting rates for cable services." *Id.*

MAP and CFA strongly oppose the Commission's suggestion that it may simply deregulate cable inside wiring rates. First and foremost, this course of action is forbidden to it as a matter of law. While it is true that the 1992 Cable Act directed the Commission to give a "preference for competition," *see* 47 USC §543(a)(2), it expressed an even more fundamental preference for protection of subscribers.¹⁴ Thus, the Act exempted cable systems from regulation *only if* "the Commission finds that [they are] subject to effective competition...." *Id.* Otherwise, the Act

¹⁴One need only look at the title Cable Television *Consumer Protection* and Competition Act of 1992, to realize the primacy of Congress' goal of protecting subscribers. *See also*, 1992 Cable Act, §§2(b)(4), (5).

requires rate regulation according to §623(b), including the "equipment used by subscribers to receive the basic service tier...." 1992 Cable Act, §3(a); and Communications Act, §623(b)(3), as amended.¹⁵

In any event, the Commission should not rush headlong into deregulation of cable inside wiring rates. Otherwise, it risks monopolization by the existing service providers. Before the Commission deregulated its telephone wiring rates, it carefully questioned whether a competitive environment existed. It examined, for example: whether new firms would enter the market to prevent monopolization by existing firms, whether other significant entry barriers existed, whether consumers possessed or could obtain sufficient information to evaluate the offerings of different firms, and what might be the effect of deregulation on wiring costs and consumer prices. Further Notice of Inquiry, *Deregulation of Customer Premises Inside Wiring*, 86 FCC2d 885, 887 (1981). It acted only after it determined that "an expanding competitive market was already in existence...." *Telephone Wiring Second Order*, 51 FedReg at 8498. It later determined that detariffing of telephone wiring was an "essential step in the process" of making wire and radio communications universally available at reasonable charges, would ensure that ratepayers received the "full benefits of competition," and would help eliminate "uneconomic and inefficient misallocation of inside wiring costs." *Telephone Wiring Reconsideration*, 1 FCCRcd at 1192.

B. Ownership Of Customer Premises Equipment

The Commission envisions a day when "technologies used to deliver and receive cable and telephone service may become more similar." *NOPR* at ¶69. However, the current state

¹⁵The Telecommunications Act of 1996 does not change these provisions in any material way. The only change it makes in the equipment costs section is to allow operators to aggregate costs into broad categories. §301(j).

of cable CPE regulation is unclear. Thus, the Commission seeks comment on whether to harmonize its cable and telephone CPE rules "to accommodate better the possible convergence of technologies." *NOPR* at ¶71. It questions whether to allow subscribers to use and connect cable-related CPE, such as set-top boxes. *Id.*

1. Allowing Subscribers To Own And Connect CPE Will Promote Individual Utility And Competition.

Freeing citizens to provide and connect cable CPE will benefit overall consumer welfare and is crucial to a competitive telecommunications market. The reasons are nearly identical to those for permitting access to broadband inside wiring. See discussion above, pages 14-16. Specifically, subscriber ownership of cable CPE equipment would foster increased technological advancements and provide consumers with greater choice. As competition in the cable CPE market develops, it will bring lower prices, higher quality, and new jobs.¹⁶

Once again, the framework established for telephone CPE provides a useful model for cable CPE. In *Computer II*, the Commission determined that telephone carriers were required to "sell or lease CPE separate and apart from their regulated transmission services." *Computer II*, 77 FCC2d at 439. It noted that, beginning with its 1968 *Carterfone* decision,¹⁷ 13 FCC2d

¹⁶The Commission's questions may have been answered by the Telecommunications Act of 1996. Section 304 of that act, in relevant part, requires the Commission to adopt regulations "to assure the commercial availability, to consumers of multichannel video programming and other services offered over multichannel video programming systems, of converter boxes, interactive communications equipment, and other equipment used...to access multichannel video programming and other services...from [unaffiliated] manufacturers, retailers, and other vendors." It appears that with this language Congress intended to require the Commission to make rules allowing subscribers to own and attach cable CPE.

¹⁷In *Carterfone*, the Commission held that a customer wishing to use his or her own interconnection device to improve personal utility had a right to do so, so long as the use "does not adversely affect the telephone company's operations or the telephone system's utility for

420, *recon den.* 14 FCC2d 571 (1968), it had followed a conscious policy of promoting competition in the telephone terminal equipment market. *Id.* As a policy matter, it found that the carrier practice of "bundling" telephone CPE with network service charges "may restrict the freedom of choice of consumers and restrains their ability to engage in product substitution." *Id.* at 442. This was because, in the face of competing CPE products, there was a "distinct potential" that carriers would prevent ratepayers from "put[ting] together the service and equipment package most desired by them." *Id.* at 443. Bundling would deter competition, as well as ratepayer choice, because subscribers would be unlikely to obtain CPE from other vendors if they were already required to pay for carrier CPE. *Id.*

Finally, MAP and CFA note that to date no party has presented evidence that subscriber connection of cable CPE would pose any harm to the service provider's network.

2. The Commission May Not, As A Matter Of Law, Deregulate Rates For Cable CPE.

The Commission seeks comment on its tentative conclusion that "deregulating rates for currently regulated CPE would be in the public interest if the marketplace for CPE becomes competitive...." *NOPR* at ¶76. It asks whether it should establish a transition period prior to deregulation of CPE rates. *Id.*

It can scarcely be argued, however, that the cable CPE market is currently competitive. And, as MAP and CFA noted in the discussion for broadband inside wiring, the 1992 Cable Act does not allow the Commission to deregulate rates for CPE needed to receive the basic service

others." *Carterfone*, 13 FCC2d at 424. *See also Hush-A-Phone Corp. v. U.S.*, 238 F.2d 266, (D.C. Cir. 1956) (ratepayers have a right to attach foreign equipment so long as not publicly detrimental).